

REMARKS

This submission is in response to the Official Action dated June 18, 2001. Claims 1, 6 and 12 have been amended. Claims 1-50 are pending. Claims 14-50 have been withdrawn from consideration by the Examiner. Reconsideration of the above identified application, in view of the above amendments and the following remarks, is respectfully requested.

The drawings stand objected to because the alphanumeric letters recited in dependent claim 6 are not shown in the drawings. Applicant respectfully point out and Figures 2a-2x show the multi-composition stick product, where the image is a heart, evergreen tree; ying-yang; 5-pointed star; 6-pointed star; sun; circle; half and half circle; heart with an arrow; lateral stripes; diagonal stripes (barber pole); longitudinal stripes; happy face; sad face; tree; crescent moon; cross; 4-pointed star; flower; ellipse; wave; lightening bolt; pinwheel; flag; lips. In addition, the present specification clearly recites that the image may be one or more alphanumeric letters, or any other geometric shape, or any combination thereof. Accordingly, Applicant maintains that after reading the present specification as a whole, one skilled in the art would readily recognize how to make the image one or more alphanumeric letters as recited in dependent claim 6. However, to be fully in compliance with the Examiner's Office Action, Applicant has, concurrently with the filing of this Amendment, submitted a Drawing Change Authorization Request, requesting approval to add drawing Figure 2y, which specifically shows an

A

alphanumeric letter, more specifically the letter "A", so that the drawing figures show every feature of the invention specified in the claims. As discussed above, after reading the present specification as a whole, one skilled in the art would readily recognize how to make the image one or more alphanumeric letters as recited in dependent claim 6. Thus, Applicant maintains that no new matter has been entered with the entry of drawing Fig. 2y. Accordingly, the objection to the drawings should be withdrawn.

The disclosure stands objected to because of a minor informality on page 5, line 26. This informality has been corrected in the manner suggested by the Examiner.

The specification stands objected to for failing to provide proper antecedent basis for the claimed subject matter. More specifically, the Examiner has indicated that the subject matter of claims 8 and 10 does not have antecedent basis in the specification.

This objection to the specification is respectfully traversed. Applicant maintains that the subject matter of dependent claims 8 and 10 is supported in the specification, as originally filed. For example, claim 8 recites that the stick composition is for topical application to an animal in need thereof. Applicant points the Examiner to, for example, page 11, lines 1-4, where the specification clearly teaches that the stick composition may be a composition intended for topical application to a person, such as a lip balm, lipstick, lip gloss, deodorant or sun

A

screen. Thus, the subject matter of dependent claim 8 is clearly supported by the original specification.

Dependent claim 10 recites that the stick composition comprises a pharmaceutically acceptable vehicle. The subject matter of dependent claim 10 is also supported, for example, in the originally filed specification on page 11, lines 7-16, where it is recited that lip balm stick compositions for topical application comprise a wax or other pharmaceutically acceptable vehicle and, optionally, one or more medicaments and/or adjuvents. Accordingly, Applicant maintains that the subject matter of dependent claim 10 is also supported by the original specification.

Claims 1 and 3-13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,192,933 to Prince. The Examiner maintains that Prince discloses a multi-color stick product comprised of a container 16 having walls and a molded multi-color stick composition disposed so as to contact the walls of the container and be advanced in the container. The Examiner points out that the stick includes a first composition 14 and a second composition 11, which differ in color.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Prince in view of U.S. Patent No. Des. 425,669 to Gavin. The Examiner is relying on Gavin for the teaching of a stick product where the interior and exterior contours of the container are different. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to make the design of the Prince container

A

such that the interior and exterior contours are different based on the teachings of Gavin.

The rejection of claims 1-13 as being anticipated by or obvious in view of Prince is respectfully traversed. Applicant maintains that Prince is, at most, cumulative of the art that has been made of record and discussed in the background portion of the present specification on pages 2 and 3.

Prince is directed towards a two colored lipstick. Despite the Examiner's assertion, the lipstick does not contact the walls of the container. Instead, as can be clearly seen in Figure 2, and as is clearly disclosed in Prince, a cosmetic rod 11 is seated into a retractable cosmetic cup 15, which is part of a lipstick case 16. Retractable cosmetic cup 15 is the only portion of case 16 that contacts the cosmetic rod 11. Cosmetic cup 15 is fixedly connected to the lipstick (i.e., cosmetic rod 11). Cup 15 is retractable with respect to case 16 so that the cosmetic rod 11 can be stored within case 16 when not in use, as is conventional with lipstick products. Thus, Prince is, at most, cumulative with respect to the teachings of the four U.S. Patents referred to in the present specification.

U.S. Patent No. 4,291,018, which is referred to in the Background portion of the present specification, discloses a method for manufacturing a lipstick having a construction of the core-sheath type which comprises two different compositions arranged as an inner core surrounded by an outer sheath. The formation of a core-sheath type lipstick is realized using a molding body having an upper part and a

A

lower part. A rod is inserted into the molding body and then the molten mass of the lipstick composition for the molding of the sheath is poured into the cavity and cooled to form the sheath portion around the rod. Then the rod and upper part of the molding body are removed thereby forming a core cavity. The upper part is remounted and a molten mass of the composition for the molding of the core is poured into the core cavity and cooled to solidify the composition. Thereafter, the upper part is demounted and the molded product is removed from the lower part and mounted in a suitable case to obtain a lipstick. As a finished product the lipstick does not contact the inner walls of the container.

Thus, the '018 patent teaches a lipstick that is mounted in a cup as shown in Figure 5, similar to the cup 15 illustrated and disclosed in the Prince '933 patent. Thus, just as the lipstick does not contact the inner walls of the container in the '018 patent, the lipstick in the Prince '933 patent does not contact the inner walls of its container 16.

U.S. Patent Nos. 4,786,449 and 4,682,886, which are also discussed in the Background portion of the present specification, teach the manufacturing of a multi-color marking implement in a transparent lipstick type container that also serves as the mold during the casting process. As illustrated in both the '449 and the '886 patents, the lipstick is fixedly seated in a cup-shaped article 24. As in the cited Prince patent, lipstick product 12 never touches the lipstick container 14 as it is advanced and retracted out of and into container 14.

A

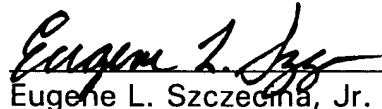
To more clearly point out this distinction from the prior art multi-colored lipstick products, independent claims 1 and 12 have each been amended to make it expressly clear that the stick composition is disposed so as to be in sliding contact with the walls of the container. Applicant notes that based on the Examiner's interpretation of Prince, the cosmetic rod 11 is not and cannot be modified to be in sliding contact with the walls of the container, as required by independent claims 1 and 12. Instead, the cosmetic rod 11 is fixed with respect to cup 15. Thus, the present invention, as exemplified by independent claims 1 and 12, is neither taught nor suggested by Prince. Accordingly, the rejection of claims 1-13 should be withdrawn, and the present application should be passed to issuance, and an early indication of such is respectfully requested.

If there are any other issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the



Examiner is respectfully requested to contact the undersigned at the telephone
number indicated below.

Respectfully submitted,



Eugene L. Szczecina, Jr.
Reg. No. 35,029
Attorney for Applicants

DARBY & DARBY, P.C.
805 Third Avenue
New York, N.Y. 10022
Phone (212) 527-7700



MARKED UP COPY OF SPECIFICATION AND CLAIMS

IN THE SPECIFICATION:

Please amend the specification pursuant to 37 C.F.R. 1.121 as follows (see the accompanying "marked up" version pursuant to 1.121):

Page 5, line 26, please delete the sentence "Figure 8c is a bottom view of the multi-nozzle along line 8c-8c in Figure 8a;" and substitute therefor:

Figure 8c is a bottom view of the multi-nozzle along line 8c-8c in Figure 8[a]b;

Delete the paragraph bridging Pages 7 and 8, from line 16 on page 7 to line on page 8, starting with "The compositions of the stick composition ... , delete the paragraph, and substitute therefor:

The compositions of the stick composition disposed in the container are arranged in a predetermined non-random pattern that is reproducible. Any desired pattern may be selected, for example, a heart (Figs. 1a-1d); evergreen tree (Fig. 2a); ying-yang (Fig. 2b); 5-pointed star (Fig. 2c); 6-pointed star (Fig. 2d); sun (Fig. 2e); circle (Fig. 2f); half and half circle (Fig. 2g); heart with an arrow (Fig. 2h); lateral stripes (Figs. 2i); diagonal stripes (barber pole) (Fig. 2j); longitudinal stripes (Fig. 2k); happy face (Fig. 2l); sad face (Fig. 2m); tree (Fig. 2n); crescent moon (Fig. 2o); cross (Fig. 2p); 4-pointed star (Fig. 2q); flower (Fig. 2r); ellipse (Fig. 2s); wave

A

(Fig. 2t); lightening bolt (Fig. 2u); pinwheel (Fig. 2v); flag (Fig. 2w); lips (Fig. 2x); one or more alphanumeric letters (Fig. 2y); any other geometric shape, such as a polygon; or any combination of the foregoing. An infinite number of different permutations are possible by varying the outer and/or inner contour of the container and/or predetermined non-random pattern of the stick composition within the container. Each cross-section perpendicular to the longitudinal axis of the stick composition may contain the same multicolor image (*e.g.*, for a heart image) or a different multicolor image (*e.g.*, for an image having horizontal or diagonal stripes). Preferably, there is little, if any, intermixing at the interface of the compositions so as to maintain the integrity of the predetermined non-random pattern.

IN THE CLAIMS:

Please amend the claims pursuant to 37 C.F.R. 1.121 as follows (see the accompanying "marked up" version pursuant to 1.121):

1. (Amended) A multi-composition stick product, comprising:

(a) a container having walls, an exterior contour, and an interior contour; and

(b) a molded stick composition disposed so as to be in sliding contact with the walls of the container and be advanceable in the container, the stick composition comprising:

(i) a first composition; and

A

(ii) a second composition;

wherein the first and second compositions differ by at least one component and the compositions are arranged in a predetermined non-random pattern that is reproducible.

6. (Amended) The multi-composition stick product in accordance with claim 5, wherein the image is a heart; evergreen tree; ying-yang; 5-pointed star; 6-pointed star; sun; circle; half and half circle; heart with an arrow; lateral stripes; diagonal stripes (barber pole); longitudinal stripes; happy face; sad face; tree; crescent moon; cross; 4-pointed star; flower; ellipse; wave; lightening bolt; pinwheel; flag; lips; one or more alphanumeric letters; [any other geometric shape;] or any combination thereof.

12. (Amended) A multi-color stick product, comprising:

(a) a container having walls; and

(b) a molded multi-color stick composition disposed so as to be in sliding contact with the walls of the container and be advanceable in the container, the stick composition comprising:

(i) a first composition; and

(ii) a second composition;

wherein the first and second compositions differ in color and are arranged in a

A

predetermined non-random image that is reproducible.

A